

ML9 Handout
Torts I: Defamation

[slide numbers are in square brackets]

1) [2] Defamation

- a. Intentional Torts: An offensive and intentional action that causes actual harm to a person (ex: Battery)
- b. Unintentional Torts: When one person causes unreasonable harm to another (ex: Negligence)
- c. Intangible Torts: Harm to one's reputation (ex: Defamation)

2) [3] Defamation Elements

- a. Defamation is: (1) a _____ false statement _____ of fact; (2) _____ "of and concerning" _____ a person; (3) that is communicated, or _____ published _____ to a third party; (4) that causes _____ harm _____ to that person's reputation _____; (5) fault (**actual malice** or **negligence**)
- b. Types of Defamation:
 - i. Slander - _____ spoken defamation _____
 - ii. Libel - _____ written/broadcast defamation _____
- c. Which one is easier to prove and why? _____
Libel is easier to prove because it is fixed and is more objective
- d. Who must prove the case and by what standard? _____
plaintiff by POE

3) [4] Element 1: False Statement of Fact

- a. Must be a statement of **fact** and not an opinion; the Plaintiff must prove that the statement was false
- b. Some States allow for libel by _____ implication _____ **or innuendo**, where the false statement creates a wrongful impression through the facts
- c. Case: *Memphis Pub Co. v. Nichols*: Newspaper publishes an article about woman who was hurt by gunshot. Article implies an inappropriate relationship, leaving the reader to believe something improper happened – is this defamation? yes

4) [5] Element 2: "Of and Concerning"

- a. Deals with _____ who _____ the article or false statement is referring to (ex: Plaintiff is mentioned by their _____ name _____)

- b. Can also refer to someone's **physical attributes** or **profession**
 - i. Can also refer to groups of people (ex: all TVF faculty)

South Park

"all persons represented are not based on real people and any relations are purely coincidental"

- c. TV and movie broadcasts: characters/names based off or inspired by real people; Plaintiff must prove that a _____ reasonable person _____ would know the broadcast refers to the Plaintiff

5) **[6] Element 3: "Publication"**

- a. Must be overheard by a third party, so it requires that at least _____ one other person _____ other than the source of the statement and the subject saw or heard the information

yelp, social media, etc.

- b. Republishers are liable; however, vendors and distributors (ex: convenience stores, grocery stores) are _____ exempt/immune _____ from liability (ISP's/websites generally not liable)

6) **[7] Element 4: Harm to Reputation**

- a. Harms: statement causes harm to Plaintiff's (1) social relationships, (2) professional relationships, (3) financial security, (4) mental health, (5) loved ones

- b. **Slander and Libel "Per Se" Categories:** committing a _____ crime _____ or involvement in criminal activity, loathsome/infectious diseases, sexual misconduct, or misconduct in their _____ business/profession _____

- c. If the libelous/slandorous statement falls into one of these "per se" categories, harm to reputation does not need to be proven need to be proven, as it is _____ already been done _____

7) **[8] Element 5: Falsity and Fault: The Public/Private Figure Distinction**

- a. Level of Fault: Actual Malice or Negligence, depending on the type of Plaintiff
- b. Individuals are classified into:
 - 1) _____ public _____ **figures;** (celebrities/influencers)
 - 2) _____ public _____ **officials** (President/Congress); **and**
 - 3) _____ private _____ **figures** (no public notoriety)

8) [9] Types of Public Figures

- a. **All-Purpose Public Figure** - someone who has become widely recognizable to the public, with great fame or notoriety or persuasive power
 - i. **Ex:** Kardashians, Elon Musk, Kanye, Emma Stone
- b. **Limited-Purpose Public Figure** - someone whose **profession** bring them into public view and have **voluntarily participated** in a public controversy (**Ex:** air traffic controller, Dr. Fauci)
- c. **Involuntary Public Figure** - someone who has not voluntarily put themselves into a public controversy (ex: neighbors of criminals, wrongfully accused) (football coach of Cal State LA)

NY Times v Sullivan (1964)
Reckless disregard of truth:
not enough research on topic, untrustworthy sources, etc.

d. [10] Standard of Fault: Public figures/officials must prove actual malice (AM), private figures only have to prove negligence

- e. **AM: (1) Knowing a statement is false OR (2) acts in reckless disregard of the truth of the truth**

- f. [11] Negligence Definition: Negligence is unreasonable conduct that causes another person actual harm

- g. Negligence Elements: duty to act with reasonable care; breach is a violation of that standard of care; causation connects Plaintiff's harm to the Defendant's breach, and damages is the harm itself

- h. [12] Courts use the *Hand* formula to determine breach and negligence – **B < P x L (spend a little to save a lot!)**
burden (or cost), probability of harm, likelihood of harm

9) [13] Defenses: Truth, Opinion, Fair Comment/Criticism, Absolute and Qualified Privilege, Single Mistake, Single Publication, SoL

- a. Main defense in a defamation action: TRUTH

[14] The Opinion Defense

- b. *Ollman* Test: Professor who had job offer withdrawn due to op-ed article; court decided in favor of the publisher

opinion pieces
and parodies
are protected

- c. **Ollman Four factor test** - (1) can the statement be proven true or false (_____ **verifiability** _____)? (2) **common use**; (3/4) **journalistic/social context**

[15] Fair Comment and Criticism

- d. Comment must (1) be of **public** _____ **concern** _____; (2) be based on _____ **true facts** _____; (3) represent the _____ **opinion** _____ of the speaker; and (4) not be made for the **purpose of causing harm**

[16, 17] Fair Report Defense (Absolute and Qualified Privilege)

- e. Absolute Privilege/Fair Report - immunity attaches to the _____ **maker** _____ of the statement. This defense applies to statements made in _____ **congress** _____ or in _____ **court** _____

***use this defense

- f. [17] Qualified Privilege/Neutral Reportage defense can be invoked if the report is “_____ **newsworthy***** _____”; (2) the source is **responsible**; (3) the statements/record are reported **accurately**; and (4) the statements concern a **public official** or **public figure**
- g. [18] Newsworthiness Factors: timing of a story, its significance, proximity to where event occurred, prominence of a public figure, and human interest
- h. [19] Single Mistake Rule: Single inaccuracy can be **corrected** or **retracted**
- i. Single Publication Rule: Plaintiff can only sue a publisher once
- j. Statute of Limitations: _____ **1** _____ year from the date of a publication’s release

10) [20] Damages

- a. _____ **compensatory** _____ **damages**: reputational harm, emotional distress, pain and suffering
- b. _____ **special** _____ **damages**: lost business, attorney’s fees
- c. _____ **punitive** _____ **damages**: publisher acted in _____ **bad faith** _____. Only available for **public figures** who prove _____ **actual malice** _____
- d. [21] Who is “defamation proof”? _____ **deceased individuals, someone** _____ **who's reputation is so bad that any defamation won't affect anything** _____ they would have to prove some “nexus” or correlation between the defamation and something bad that resulted of it

ML10 Handout – Torts II: Right of Privacy

[slide numbers are in square brackets]

1) [2] Right of Privacy Intro

- a. Defamation deals with harm to **reputation**, whereas the right of privacy deals with the **right to be** _____ left alone _____
- b. Four Right of Privacy Torts
 - (1) **false light** invasion of privacy (FLIP)
 - (2) **intrusion upon seclusion**
 - (3) **public disclosure of a private fact** (PDPF)
 - (4) **misappropriation** of name, likeness and identity (NLI)

2) [3] False Light Invasion of Privacy (FLIP)

- a. Definition: A false statement or report that makes a person to appear to be someone he or she is not in the eyes of the public
- b. Elements: (1) Publicity placing the Plaintiff in a false light (____ identification ____); (2) discloses information presented as factual but is **actually false**; (3) highly **offensive to a** _____ reasonable person _____ (**RP**); (4) causes _____ actual damage _____ to the Plaintiff
- c. Element 2: Information that is presented as true but actually false; court will look at the Defendant's intent
 - i. Information must be _____ misleading _____ and _____ offensive _____
- d. Element 3: Highly offensive to a reasonable person (RP); societal standard
- e. Element 4: Damages - can be any harm (not just reputation)
 - i. Ex: _____ harms to privacy, dignity, or emotion _____

[4] FLIP Factors

- f. **Embellishment** - Adding false material to otherwise true facts
- g. **Distortion** - Omitting facts or context to make an otherwise accurate story appear false
- h. **Fictionalization** - Including some element of truth in a largely fictional piece

- i. Distinctions from Defamation: (1) Plaintiff has to prove _____ actual malice _____, regardless of whether the Plaintiff is a _____ public or private figure _____. In defamation, private figures prove _____ negligence _____. (2) Statement needs to be made to a _____ mass group _____. _____; only 1 person is needed for Defamation

[5] FLIP Cases

- summary judgement:
means before trial they
determined there was no
issue
- j. Facts: E! documentary on Paula Abdul references alleged affair with disqualified American Idol contestant Corey Clark back in 2005 during Season 2 of American Idol. Clark sues E! network. Result? case was dismissed on summary judgement (before trial)
Why? Corey Clark wasn't able to prove actual malice

3) [6] Intrusion Upon Seclusion – A physical or technological disturbing into someone's reasonable expectation of privacy (**REOP**)

- a. Elements: (1) Defendant intentionally intruded into a _____ private place, conversation, or matter _____. (2) highly offensive to RP; (3) P has **REOP** in the information
- b. What do we have a high REOP in? your person and your property _____
- c. Limited REOP: invited guests, attending concert/sporting event
- d. No REOP: trespassing, public property, employer, borders/customs
 - i. **Electronic Intrusion** - Employers/customs _____ can read _____ people's e-mails or texts
- e. **Defenses to Intrusion**: (1) **Consent**; (2) **False Pretenses**; (3) **Newsworthiness**
- f. [7] *Sanders v. ABC* - Undercover reporter posed as a psychic, employee discussed her personal hopes and dreams which was broadcast on national TV; **network found liable** as an employee has a REOP that their conversations will not be _____ secretly videotaped _____

4) [8] Public Disclosure of Private Facts (PDPF)

- a. Definition: The publication of _____ truthful _____ private information that is not of legitimate public concern

- b. Elements: (1) **Public disclosure** (2) of a **private fact** which is (3) not of legitimate public concern and (4) the disclosure is **highly offensive to a reasonable person**
- c. **Element 1: Public Disclosure** – Applies if disclosure made to a small group of people with a _____ special relationship _____ (ex: _____ co-workers _____)
- d. **Element 2: Private Fact** - Involves a person's _____ most personal information _____ (ex: _____ financial situation, _____ marital status, Professor Spitz's extra toe _____)
- *****
 - e. **Element 3: Not of Legitimate Public Concern** - Plaintiff must show that the information being disclosed is _____ not newsworthy _____
 - i. **Newsworthiness Factors** - proximity, timeliness, significance, prominence, human interest
 - f. **[9] *Diaz v. Tribune*** – Magazine company interviews Plaintiff under the pretense of their student council record and discloses their gender reassignment surgery.
 - i. Result? Defendant **publisher was found liable** as this was a _____ morbid and sensational prying, and not newsworthy _____
 - g. **[10] PDPF 1st Amendment Defense** - Protects the publication of private facts if there is some _____ public significance _____ and the information was _____ lawfully obtained _____

5) **[11] Misappropriation of NLI**

- a. Definition: Where a company uses your _____ name _____, _____ likeness _____ and _____ identity _____ without permission for commercial gain
- b. The right of publicity includes the right of _____ survivorship _____, which can be willed to family
- c. **[12] Right of Publicity/Commercialization Elements**: (1) NLI was used; (2) in a manner that **identified** that person; (3)

distributed; (4) for _____ commercial or trade purposes _____;
(5) without permission

- d. **[13] *Vanna White v. Samsung***: Ad campaign features Wheel of Fortune co-host as a robot turning letters next to a game board. White not compensated or asked permission.
Result? _____ White won \$400,000; example of misappropriation _____

6) [14] Right to Privacy Tort Defenses

- a. **Defenses**: Newsworthiness, Public Domain, Incidental (de minimis) Use, Consent, 1st Amendment
- b. Media entities and publishers have the right to _____
_____ editorial discretion _____ under the 1st amendment.
The 1st Amendment also protects using celebrities' names in media so long as the material concerns matters of
_____ public interest _____

7) [15/16] 1st Amendment: Transformative Use & Artistic Relevance

- a. **Transformative Use** - Is something _____ new _____ being created from the work itself?
- b. **Elements of fact and fiction put together make a work transformative and** _____ protected under the 1st Amendment _____
- c. **1st Am**: Court balances **Plaintiff's interest in their** _____ NLI _____ against the **Defendant's interest in** _____ freedom of expression _____

[17] 1st Amendment Defense - Artistic Relevance Test

- d. *Rogers v. Grimaldi* – Ginger Rogers sues MGM for releasing movie called “Ginger and Fred”. Allegedly misleading title is protected unless it has no relevance to the work or misleads to the work's source

ex: Ariana Grande sues
Forever 21
F21 hires lookalike and
Grande sues for false
endorsement

- e. **[18] Trademark Infringement/False Advertising**: Any person who uses a name or symbol in commerce is liable if they make a **false or misleading statement of fact** which is _____
_____ likely to cause customer confusion _____
- f. **Business Solution** - _____ license/pay for it, don't use it/look for _____
_____ something/someone different, get permission _____

ML2 Handout - 1st Amendment
[Slide numbers in square brackets]

1) [2] Introduction to the 1st Amendment

- a. Text: “Congress shall make **no law** respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the **freedom of speech**, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances”
- b. **Meaning:** Guarantees the right to free expression, freedom of the press
freedom of religion

2) [3] Policy Arguments

- a. Why do we protect free speech? _____

- b. How is the 1st Am. used in court? To attack an
existing law as unconstitutional OR to defend it
- c. Are cases held in Federal or State Court? Scrutiny
- d. There are three levels of _____ that the Court
must apply one of when dealing with different types of speech:
rational basis review (); **intermediate scrutiny**
(); **strict scrutiny ()**
- e. **[4]** Whose interests are being balanced? _____

- f. Ex: A political protest calls for killing all Congressmen and
Congresswomen. The law makes it illegal to engage in speech
that threatens violence against others. If Plaintiffs challenge the
law for being unconstitutional, the court will balance the
government interest in Law and order
versus the protestors interest in Free speech
- g. Outcome? Law is Constitutional as there is
another purpose to the law other than suppressing speech (ex:
safety)

3) [5] 1st Amendment and the Film Industry

- a. *Mutual Film Corp. v. Industrial Commission of Ohio* (1915) – 1st amendment protection does not extend to motion pictures
- b. Hays Code – Studios self-censored - films could have no profanity, no nudity, no illegal drug activity, good guys had to win, no sympathy towards criminals, no criticism of the church
- c. *Winters v. New York* – SCOTUS rules in favor of free speech as law about crime magazines is overly **vague**
 - i. Publication is entitled to free speech as **literature**
- d. *Burstyn v. Wilson* – The “Miracle” decision that found that movies were a significant medium for ideas and protected under the 1st amendment

4) [6] Types of Speech

- a. Protected: Artistic speech and political speech
- b. Somewhat protected: Commercial speech, indecent speech/obscenity
- c. Not Protected: Hate speech/defamatory speech

5) [7] Artistic Speech

- a. **Artistic speech** includes books, movies, art, literature, music, digital content
 - i. Courts evaluate artistic speech using RBR
- b. Why should artistic speech be protected? If all artistic speech needs to be approved by government, creates too much Censorship on what can be created

6) [8] Political Speech and TPM Restrictions

- a. Political speech is protected unless it is like led to violence
 - i. Courts evaluate political speech using SS; if likely to incite violence, courts evaluate using Strict scrutiny

- b. *Brandenburg* case – Political speech is likely to lead to
lawless action

Time, Place and Manner (TPM) Restrictions

- a. TPM Rule: Government can regulate How where and when
the speech is given
provided that these restrictions are Reasonable
and content neutral
- b. However, the government cannot regulate the subject matter
or view point
of the speech itself
- c. Example of Content-Neutral: No protest between 11pm to 7 am

i. Courts use RBR for content-neutral laws

- d. Example of Content-Restrictive: no anti trump no anti Harris and no anti ice

i. Courts use SS for content-restrictive laws

7) [9] Commercial Speech

- a. Commercial speech is protected so long as the speech is not
False or Misleading
- i. Ex: Superman costume Halloween
- ii. Courts evaluate laws concerning commercial speech
using intermediate **scrutiny**
- iii. False advertising is unprotected

Fighting Words – racial, ethnic or sexist insults

- a. *Chaplinsky* case: Insulting or fighting words, once spoken, are
likely to inflict injury or breaching the peace

8) [10] Indecent/Obscene Speech

- a. FCC considers indecent expression to be **offensive, explicit or graphic material which can cause harm to minors**
- b. Indecency is morally offensive to a
reasonable person
- i. Courts evaluate indecent/obscene speech using SS

- c. *George Carlin* “7 dirty words” stand-up routine played on radio; court finds that the government can regulate indecent speech on public airwaves

b. Miller Three Factor Obscenity Test

- (1) whether the average/reasonable person finds the work appeals to the prurient interest [whether society thinks the work is obscene]
(2) whether the work depicts offensive/sexual conduct;
(3) whether the work, taken as a whole, lacks serious artistic, literary, political, scientific value

9) [11] Defamatory Speech/Hate Speech

- a. Defamatory and hate speech are **unprotected** under the 1st am.
b. Defamatory speech is a False statement / of and concerning a person / which is published to a third party / that causes harm to one's reputation

10) [12] Levels of Scrutiny

- a. Scrutiny is the method a court uses to evaluate a law
- b. Rational Basis Review (RBR): The law must be **rationaly related** to a legitimate government interest
- i. Ex: Artistic speech, content neutral speech, Law concerning protest
- ii. Under RBR, almost any policy reason to pass the law is constitutional
- c. Intermediate Scrutiny (IS): Must **substantially relate** to an important government objective
- i. Ex: Commercial speech, indecent/obscene speech
- ii. Under IS, some laws are deemed constitutional
- d. Strict Scrutiny (SS): Must be narrowly tailored to promote a Compelling state interest
- i. Ex: fighting words, hate speech/ defamatory speech
- ii. The government must have No or very few other alternatives, otherwise the law is **unconstitutional**

11) **[13] Vagueness and Overbreadth**

- a. Plaintiffs can challenge the law for being **vague** or **overbroad**.
If a court agrees, the law can be Struck down
- b. **Vagueness** - If reasonable persons of average intelligence have to guess as to its meaning
- c. **Overbreadth** - If law attempts to restrict behavior that is both unprotected and protected under the first amendment
 - i. Ex: School dress code
- d. *LAX Case*: Board resolution prohibiting “any first amendment activity” at LAX was struck down and **unconstitutional**

Mock Trial 1 – Key Issues to Discuss

- MT1A: Political speech/likelihood of violence, TPM restrictions, level of scrutiny (RBR vs. SS), independent research on violent or non-violent political protests
- MT1B: Fighting words/likely to inflict injury, commercial speech, level of scrutiny (IS vs. SS), independent research on whether violent video games lead to violence in society
- MT1C: Obscenity/3-part *Miller* test, artistic speech, level of scrutiny (RBR vs. IS), overbreadth, independent research on comedians with controversial material

ML3 Handout – Agencies: FCC/MPA/New Media Regulation
[Slide numbers in square brackets]

1) [2] The Federal Communications Commission

- a. The FCC is a government agency responsible for regulating the radio, tv, and phone industries industries
 - i. It is an independent government agency, made up of 5 appointed commissioners
- b. FCC regulates all telecommunications under the Communications Act, approves mergers/licenses, rule on net neutrality renewals, issue fines for non-compliance
- c. What does the FCC not do? Does not have any power over the Internet or UGC (user generated content)
- d. FCC only has power over broadcast TV: In TV, broadcast (ABC, NSMBC) is regulated different than cable (AMC, FX), which is regulated different than specialty (HBO Showtime), which is regulated different than subscription video on demand/SVOD (Netflix, Hulu, Amazon Prime) networks
 - i. FCC can regulate the Content of a broadcast for swearing, obscenity, nudity

2) [3] History of the FCC: Public Interest and Fairness Doctrine

- a. Strategy: Listen to the viewers and listeners to determine what is in the Public interest to preserve an uninhibited marketplace of ideas
- b. *Red Lion* case requires all radio and television broadcasters to present a Fair and Balanced discussion of public issues
- c. Generally, the FCC relies on broadcasters to determine what is fair and reasonable to broadcast over the airwaves
- d. **Fairness Doctrine**: Broadcasters must devote a “reasonable percentage” of time to discussing controversial issues and provide “reasonable opportunities” of contrasting views

- e. The issue was that the Fairness doctrine only applied to holders of **Broadcast** licenses (not cable)
- f. Purpose of the Doctrine was to preserve a marketplace of ideas in which truth will undoubtedly prevail; by 1985, the FCC said that viewpoint diversity is **Fully served** by the multiplicity of voices
 - i. In 1987, the Fairness Doctrine was **Eliminated** by SCOTUS, resulting in the party polarization of networks
- g. Each network now has to ensure “**Equal time**” for each party during election seasons

3) [4, 5] Net Neutrality

- a. **Net Neutrality** – The idea that all Internet Service Providers (ISP’s) must treat all internet communications **Equally** and cannot intentionally block or slow or charge money for specific content
- b. **Arguments for Net Neutrality** – **Promote encourage innovation**
- c. **Opponents of Net Neutrality** – **Increased cost for consumers**

4) [6] Obscenity, Indecency and Profanity

- a. FCC does not permit airing **Obscene** programming to air at any time
- b. Violation to air **indecent or profane programing** during certain hours (**6am to 10am**)
 - i. Policy: **protect minors from harmful content**
- c. **Obscenity** – 3 factor “Miller” test
- d. **Indecency** – language or material depicting sexual activity that is offensive as measured by **Community standards**, but not quite rising to the level of obscenity
- e. **Profanity** – **swearing or cursing** – grossly offensive to the public who consider it a nuisance

[7] Examples of FCC Fines: Janet Jackson, Howard Stern, News Reports

- f. **[8] “Fleeting Expletives”** – before 2004, FCC would generally avoid issuing fines if profanity was used Once and it appeared to be accidentally
 - i. Ex: Bono’s 2003 Golden Globes Speech for “The Hands that Built America”; the FCC found this speech to be not indecent and chose not to fine NBC for airing the clip in real time
- g. Most award shows are now broadcast on a 7 second delay so that censors can catch any obscene language and avoid fines
- h. Penalties: FCC can Revoke a TV/radio stations or Deny its renewal
- i. FCC can regulate broadcast and radio networks, but has No power over specialty cable, satellite or internet/subscription video on demand (SVOD) content

5) **[9] MPA**

- a. The Motion Picture Association of America (MPA) is used to regulate films and monitor piracy/Copyright infringement
- b. **MPA Ratings:** G - general audience; PG - Parental guidance; PG-13 - some material inappropriate; R - under 17 requires parent/guardian; NC-17 - Nobody under 17 admitted; NR - Not rated

- * c. 3 primary sources for movie revenue: (1) Theatrical; (2) Digital; (3) Physical

6) **[10] New Media Regulation/User Generated Content (UGC)**

- a. Streaming Video on Demand (SVOD) outlets: _____
 - i. SVOD services are Not regulated for its content by any major governing body

- b. UGC - user-generated content posted on online platforms
- i. Ex: **YouTube, TikTok, Twitter, Reddit**
- c. Under the digital millennium copyright act (DMCA), websites that host content are **Not liable** for what its users post unless (1) they exercise some kind of editorial discretion/**edit post**; or (2) promise to remove or edit a post and then **do nothing**
- d. §512 of the DMCA provides a “**Safe harbor**” liability protection for internet service providers (ISP’s)
- e. **[11]** *Viacom v. YouTube* case – 100k clips of MTV, CBS and Nickelodeon footage on YouTube’s website resulted in lawsuit for Copyright infringement
 Viacom Argument: **We own this content and your profiting off it**
 YouTube Argument: **User posted these content and we were unaware**
 Result? **Parties settled for an undisclosed amount**

[12] Social Media and Media Law: Fyre Festival

- f. 2017 music festival created by Billy McFarland and Ja Rule was promoted by Instagram influencers and models, who did not disclose that they were being paid to promote the festival, which was later cancelled. Concertgoers and vendors were left stranded. McFarland later sentenced to prison and fined \$26M.
- i. Influencers received **No penalty** for their actions; Instagram ads now include **#ad**

[13] Tik/Tok-Bytedance Lawsuit: \$92M settlement for VPPA violations, Section 1542 release from future lawsuits

ML4-5 Handout – Copyright and Intellectual Property Law
[Slide numbers in square brackets]

1) [2] Intellectual Property (IP) Introduction

- a. A copyright is the _____ exclusive _____ legal right given to the creator or owner of a creative, _____ registered _____ work to print, publish, perform, film, or record literary, artistic or musical material
- b. Governing acts – 1976 Copyright Act, DMCA 1998
 - i. All Copyright cases are heard in ____ Federal _____ Court
- c. Federal power over Copyright originates from *Article I, §8, Clause 8* of the Constitution under the necessary and proper prong of the “commerce clause”
- d. [3] Copyright protects and gives ownership over the _____ expression _____ of an idea, not _____ the idea itself _____
 - i. Why are ideas not protected? _____ not tangible, no proof of “theft” _____

2) [4] Branches of IP - Trademark and Patent

- a. **Trademark - Protects** ____ words/slogans, short phrases, etc _____
 - i. Ex: _____ Nike, Nike’s swoosh, “just do it” _____
- b. Test for infringement: ____ likelihood of confusion _____
- c. **Patent - Protects** ____ designs, systems, processes, formulas _____
 - i. Divided into **design patents, utility patents and plants**
- d. Trademarks and Patents file applications with the ____ USPTO _____

3) [5] Copyright Requirements

- a. There are two elements required to receive Copyright protection
- b. **Element 1** - ____originality____
 - i. Test: Modicum of creativity
- c. While the Work itself cannot be copied, **genres, facts and themes** can be (Ex: ____war movies, romantic movies____)
- d. **Element 2** - ____fixation____
 - i. Test: Must be fixed “in a tangible medium of expression”
- e. Do you **own** a © once you have done these two things?
 __Yes__
- f. Why do we **register** with the © office? Unless the work is registered with the Copyright office, an owner cannot enforce or sue a third party who uses it without authorization

4) [6] Section 102 - Types of Original Works

- a. ____Literary____ Works – novel, short story, poems
- b. Audiovisual Works - __Movies, tv shows____
- c. Musical Works – divided into the **musical composition (MC)** and the **sound recording (SR)**
 - i. MC – ____lyrics, melody, notes____
 - ii. SR – ____arrangement____
- d. Dramatic Works - plays/musicals (incl. music) screenplay/pilot
- e. Pantomimes and Choreographic Works – dances
- f. Pictorial, graphic, sculptural works
- g. Architectural Works - sculptures, building designs
- h. Other - “catch all” - software, patterns, compilations

What is not protected by ©?

- i. Works that haven’t been fixed in a tangible medium of expression; ideas, themes, data, concepts, scene-a-faire, historical facts; titles/names/short phrases/symbols and designs

5) [7] Section 106 Rights

- a. Hypo: I write a script and register its Copyright. What does that allow me to do?
- b. **1 - Making ___ copies_____ (physical/digital)**
- c. **2 - Make a “derivative work” - _____ a movie from a book_____**

- d. **3 - Distribute the Work** - Make it available to the public through sale, in a process known as _____ licensing_____
- e. Types of Licenses: can be **exclusive** to one party or **non-exclusive** to multiple parties
- f. Can a Copyright owner license a Work after they have exploited it? _____ Yes_____
- g. **4 – Public Performances**
 - i. Ex: _____concerts, music screenings, etc_____
- h. **5&6 - Public display and digital audio transmission**
 - i. The unauthorized use of any of the Section 106 rights = _____infringement_____

6) [8] Copyright Ownership - Joint Authors

- a. **Joint authors** are a writing team or two or more authors working together (Ex: _____Coen brothers_____)
- b. To be a joint author, each co-author has to contribute to the work. If so, each author has an **equal and undivided interest** and all **profits are** _____shared

- c. Each author can grant a **non-exclusive license** to a third party, both authors need to consent to an exclusive license

7) [9] Copyright Ownership – WFH vs. IC

- a. Work For Hire: Author/creator is not the owner
- b. Independent Contractor: Author/creator is the owner

- c. (1) Work was developed as a “**WFH**” through the
 ___scope___ **of their**
 ___employment___ or (2) the Work is
 ___ **or commissioned** by a
 Company from a non-employee/independent contractor
 i. Effect: The ___ company___ owns the
 Work, not the employee/creator
- d. If not a WFH, the writer is an “___ independent
 contractor___”
 (**IC**), and that person owns the Work and can exploit it how
 they want

When it is unclear, a court will consider the following factors:

- Does the employer exercise ___ **control** ___ over the
 worker?
 → Does the employee own their **own**
 ___ **equipment** ___ or does the Company provide it?
 → Does the employee create their own **work schedule** or run their own
 company;
 → Method of **payment/tax treatment**? ___ **1099** ___ for IC’s,
 ___ **W2** ___ for EE’s

8) [10] Duration of Copyright Protection

Once a work is registered, Copyright owners receive protection
 for the following durations:

- i. **IC**: Life of the author + _70 years___ years
 ii. **WFH**: The shorter of: (a) _95___ years from the
 date of publication; or (b) _120___ years from the
 date of creation

b. **Droit Moral** – Moral rights of foreign authors

- i. Ex: Makers of Parasite wish to exploit the movie in the
 U.S. – do they have U.S. © protection? ___ Yes___

[11] Copyright Expiration - Once Copyright ownership expires, it
 falls into the ___ public domain___

- c. Which beloved children’s book/movie character recently fell
 into this category? ___ Winnie the
 Pooh___

9) **[12] Introduction to Copyright Infringement**

- a. Copyright infringement occurs when someone has taken a part or all of someone else's Copyright work without a _____ license _____ or _____ permission _____
- b. If you have registered a Copyright and someone is using your work without a license or permission, what should you do? Send a _____ cease _____ and _____ desist _____ letter to the infringing party
- c. Process of **notice and takedown** by informing Internet Service Provider (ISP)

10) **[13] Proving Copyright Infringement: Elements ***

In order to succeed on a © infringement cause of action, a Plaintiff must prove the following elements:

- a. **1 – The work is** _____ protected by Valid Copyright _____ (ownership)
- b. **2 – The Copyright is** _____ registered _____ with the Copyright office; AND EITHER
- c. **3A – The Defendant directly** _____ copied _____ the work; OR **3B – The Defendant had** _____ access _____ to the work and the two works are _____ substantially similar _____ to one another
- d. Why sue right away? _____ **it prevents infringing activity**
- e. Why not sue right away? _____ **Money!**

11) **[14] Examining “Substantial Similarity”**

- a. Extrinsic (Objective) Test – Court searches for the similarities in _____ plot, dialogue, tone, characters _____, involves expert testimony
- b. Intrinsic (Subjective) Test – whether an _____ average _____ person considers the works

substantially similar, which is determined by a
__jury__

12)[15] Infringement Defenses

- a. Statute of Limitations – How long do you have to file a lawsuit? __3__ years from the date they knew (or should have known) of infringement
- b. **Independent Creation** - Two or more works can __both__ receive © protection if each author can prove that: (1) the work was created **independently** and (2) neither has **copied** the other
- c. **“De Minimis”** – (1) the **amount** of the work taken is minimal AND (2) the **“observability”** of the © work is negligible
- d. What if you want to use a Copyrighted clip in your own Work?
__Ask permission, give them credit, get a license__

13)[16] The “Fair Use” Defense

- a. This defense permits the
__unlicensed__ use of Copyrighted Works in certain instances
 - i. When can you use a Work **without a license**?
__reporting, criticism, education, and parody__
- b. **Fair Use 4 Factor Test** - (1) __purpose__ of the use; (2) __nature__ of the Work; (3) __amount__ of the Work being used; and (4) __commercial__ use/effect on the market
- c. [17] **Factor 1 - Purpose and character of the use**
Considers whether the alleged Copyrighted (second) Work is
__transformative__ – has something new been created? (Ex: __Amish Paradise__ - Weird Al)

- d. Case: Harry Potter encyclopedia which put all terminology used in the films into one Work – verbatim use of text is
____NOT____ **transformative** and
_____ not fair use _____

[18] Factor 2 - Nature of the Copyrighted Work

- e. Stronger case of fair use if copied from a _published _____ work rather than unpublished work, because the author of an unpublished work should control the **first** public appearance of their expression under the ____ **1st sale doctrine** _____
- i. *Sony v. Universal City Studios, Inc.* – “Betamax” case – recording series for time shifting **is not** © infringement

[19] Factor 3 - Amount and Substantiality

- f. This factor asks ____ how much _____ of the original work was taken

[20] Factor 4 – Effect on Market/Commerciality

- g. Court considers whether the infringing party’s use deprives the copyright owner of ____ income _____ **or the effect on the** _____ future profits _____ of the Work

14)[21] Secondary Liability: Third Party Infringement

- a. Plaintiffs can also bring infringement lawsuits against Defendants who **helped promote** the infringing act, known as _____ contributory _____ **infringement**; parties who **benefit financially** from infringement might be liable for _____ vicarious _____ **infringement**
- b. Case: *MGM v. Grokster* (2005) – peer-to-peer (P2P) file sharing services could be sued for inducing © infringement when users share and download music from one another
- i. Result? ____ WEBSITES OWED 50 MILLION TO COMPANIES _____

15)[22] Remedies for Infringement

- a. Actual Damages = \$750-\$30,000 **per** _____
_____ **WORK** _____
- b. Statutory Damages = \$150,000 **per** _____ *INFRINGING*
ACT _____
- _____ Non-Monetary/Equitable remedies
- c. **Injunction** – _____ **PREVENTS FURTHER COPIES**
FROM BEING MADE/
DISTRIBUTED _____
- d. **Impoundment** – Collection/destruction of infringing copies

16)[23] Music Law

- a. Musical Composition - owned by the
_____ **SONGWRITER** _____
- b. Sound Recording - owned by the _____ **RECORD**
LABEL _____

[24/25] “Blurred Lines” Case - Marvin Gaye vs. Robin Thicke

- c. Song released in Summer 2013 by Robin Thicke and Pharrell,
becomes #1 hit. Sued in CA Federal Court by Marvin Gaye’s
estate for the 1976 song “Got to Give it Up”.
- d. Plaintiff (Marvin Gaye’s Estate) Argument: (1) owns ©; (2)
registered ©; (3) access and _____ **SUBSTANTIAL**
SIMILARITY _____
- e. Defendant (Thicke/Pharrell) Counterargument: _____ **NOBODY**
OWNS A FEELING/GENRE _____
- f. Result? _____ **THEY LOST, OWED 5.3 MILLION AND 50% OF**
THE ROYALTIES _____

[26] Social Media and Copyright: Lizzo “Truth Hurts”

- g. Is Mina Lioness’ tweet protected by Copyright?
_____ **YES** _____
- h. Result? _____

ML6-7 Handout – Contract Law
[Slide numbers in square brackets]

1) [2] Introduction to Contracts

- a. What is a contract (“K”)? _____ a legally enforceable agreement that set forth the rights and duties of two or more parties _____

- b. Goal: For contracts to be _____ enforceable _____

[3] *The Five Big Picture Questions*****

- 1) Is there a contract?
- 2) If there is a contract, what does it mean?
- 3) Is there performance or is there breach?
- 4) If breach, is there an excuse?
- 5) If no excuse, what is the remedy?

2) [4] Big Picture Q1 – Is there a contract?

- a. In order for a K to be enforceable, a contract (K) needs:
(1) _____ **mutual assent** _____
(MA) and (2) _____
_____ **consideration** _____ (KSN)
- b. Mutual assent includes the doctrines of _____ **offer** _____
and _____ **acceptance** _____

3) [5] The Offer

- a. Definition: A manifestation of willingness to enter into a bargain
- b. Every offer has two elements: (1) Offeror _____ **intends** _____ to enter into a deal; and (2) _____ **definite terms** _____

- c. Case: Baer v. Chase: Writer of *the Sopranos* agreed to “take care of” Plaintiff, who he used to discuss story ideas with. Is there a contract? _____ No, no definite terms _____
- a. Hypo: Go run around campus 3 times, and I’ll give you a good grade in the course. Offer?
 _____ No _____

- d. What are **not** offers? _____ invitations to bargain, gifts, adverts _____

4) [6] Acceptance

- a. How can an offeree accept the deal?
 _____ **words** _____ or
 _____ **conduct** _____
- b. Acceptance follows the _____ **mirror image** _____ **rule**, where the acceptance must mirror the same terms of the offer
- c. Any additional/different terms is a
 _____ rejection _____ of the original offer and
 a _____ **counter-offer** _____

5) [7] Termination

- a. Effect: If an offer is terminated by either party, _____ **it cannot be accepted later** _____

- b. **1 - Revocation** – The offeror _____ **takes the offer back (before it is accepted)** _____

- c. Ex: I offer you \$50 to sing in front of class. Before you do so, I say, “changed my mind, I’m keeping the \$50.” Can you still accept? _____ No _____ **because an offer can be revoked** _____ anytime before acceptance _____
-
- d. **2 - Rejection** – The offeree does not accept the offer or make a counteroffer with new, different or additional terms
- e. **3 - Expiration** – Time limit for acceptance expires

6) [8] Consideration (KSN)

- a. Definition: KSN is the inducement, price or promise that causes a person to enter into a contract and forms the basis for the parties’ exchange
- b. **Element 1: Value** – Benefit to promisor or detriment to the promisee, which can be **(1) an act or (2) a forbearance**
- c. **Element 2: Bargained-for exchange** – Promises between the parties
- d. Act - Ex: I will pay you \$5 to go get me a soda from the vending machine.
- i. **Promise**: _____ pay \$5 _____
 - ii. **Return Promise**: _____ get spitz a soda _____
- e. Forbearance – Agreeing not do so something
- i. *Hamer v. Sidway* – Nephew and uncle agree that the nephew will not drink or smoke until age 21 in exchange for \$5,000. At 21, having complied, uncle refuses to pay. KSN? _____ Yes _____

7) [9] Exceptions to KSN

- 1) _____ **illusory promises** _____
(where one party can change the terms at any time);

- 2) preexisting duty
(someone is already obligated to do something); and
3) Past KSN (work is already done)

- a. Hypo: Teach TVF-4200 for \$1. I teach, then sue. KSN?
— Yes —
i. Courts do not look to see whether the dollar value of consideration was adequate
b. If a contract is signed and later modified, must be supported by
new KSN

8) [10] Types of Contracts

- a. express contracts (in writing)
b. implied contracts (words or **conduct** of parties)
c. **Promissory estoppel**/ reliance
i. No actual contract exists, but the Plaintiff has spent
time or money preparing for the contract and it would be unfair for the court not to enforce a deal
d. **Quasi-contract**/unjust enrichment/restitution
i. Difference: Reliance looks at the detriment to the Plaintiff, whereas unjust enrichment/restitution looks at the
benefit
e. **Option Contracts** – Payment to keep an offer open for a specified period of time where the offer cannot be revoked

9) [11] Reliance and Restitution Theories

- a. Reliance theory (also known as **promissory estoppel**) looks at the Plaintiff's detriment
b. Case: *Kirksey v. Kirksey* – Defendant wrote his sister-in-law and persuaded her to sell land to him at a discount in exchange for living on his land. After two years, was removed. Is there a K under a reliance theory?
Yes

Restitution/Unjust Enrichment

- c. Scenario: Plaintiff gave some
benefit to Defendant, Plaintiff
expected to be paid for the benefit, and Defendant would be
unjustly enriched if they were allowed to keep the benefit
without paying for it
- i. Ex: Painter paints someone's house, homeowner does not
pay. Who wins?
painter _____

10)[12] Verbal Contracts

- a. Verbal contracts are generally unenforceable between parties
- b. Under the **statute of frauds**, certain types of agreements must
be in writing
- a. Ex: Contracts that cannot be performed within 1
year _____ from the date of their
formation

11)[13] Big Picture Q2: If there is a K, what does it mean?

- a. This question focuses on the contract's
terms _____
- b. Courts are reluctant to fill in the terms of a contract because of
the merger/integration
clause
- c. Courts can use "gap fillers" to determine what the parties meant
with respect to **material/major contract** terms, which include:
price, terms,
credit _____

- d. Implied Covenant of ____ Good Faith____
and Fair Dealing - Each party will act reasonably and fairly
towards completing their end of the deal

12)[14] Contract Ambiguities

- a. Ambiguous (or vague) terms have multiple meanings which are
accidentally unclear; court will try to determine the parties'
____ intent____
- b. Factors: (1) plain meaning; (2) extrinsic evidence or prior
negotiations; (3) expert testimony; (4) course of performance
- i. If a court cannot resolve the ambiguity after all of these
factors, it will be interpreted against the party that
____ **drafted**____ the contract
- c. Once P has proven that there is a valid contract (K) showing
that there is MA and KSN, the contract is presumed to be valid,
and ____ enforceable____. If so, the
burden of proof **shifts** to the Defendant to prove the K is **not**
valid, or that the Defendant has **an** ____ excuse/
defense____

13)[15] Big Picture Q3: Is there performance or is there breach?

- a. Rule: Full performance of a contractual obligation
____ never____ a breach
- b. What happens if a party **substantially** performs its obligations?
A party will typically get the full contract price less the ____
____ **value of any**
defects____

c. ___poor___ performance, ___part___ performance, ___no___ performance may be a breach

d. **Material Breach** – failure to substantially perform

i. If a party is in material breach, excuses the ___non___ breaching party's performance

e. **Immaterial breach** – substantial but incomplete performance

i. Breaching party usually has the right to ___cure___

[16] Special Performance Rules. *mock trial 2c

f. **Anticipatory Repudiation:** ___before___ the time for performance is due, one party indicates to the other that they will not honor their part of the contract

i. Effect: Other side does not need to perform

g. **Strict Performance** – If a party wants to make performance due on a specific date, they must include a ___time___ of the essence ___clause

14)[17] Big Picture Q4: If there is a breach, is there an excuse?

a. Void contracts mean that ___neither___ party can enforce the contract (ex: illegality, unconscionable/one-sided terms)

b. Voidable contracts mean that ___one___ party can choose to ___enforce___ the contract or **rescind/disaffirm** (ex: capacity, fraud, duress, undue influence)

15)[18] Capacity-Based Defenses

- a. Rule: A person suffers from a mental incapacity if they cannot understand the nature or consequences of the transaction
- b. **Capacity Issues** – mental incapacity can make a contract _____voidable_____
- c. **Minors** – A minor can _____disaffirm_____ a contract anytime **before they turn** ____18_____

16)[19] **Fraud**

- a. Whether the contracting party **understood** the terms of the contract or if they were induced into a contract through a _____**false statement of fact**_____
 - i. This misrepresentation must be factual and not an opinion; the Defendant must know the statement was false; the issue was material/major; and the Plaintiff relied on the false statement
- b. *Stambovsky v. Ackley*: A seller of a house does not disclose that the house is haunted. The buyers are terrified of ghosts and ask the seller if the house is haunted; the seller says nothing. After completing the purchase, the buyers experience paranormal activity. Can they rescind the deal claiming fraud?
 - i. Result?
 _____**Yes**_____

Duress and Undue Influence

- c. **Duress** – Improper threats that force someone into a contract
- d. **Undue Influence** – One party is using another's _____vulnerability_____ to their advantage

17)[20] Mistakes and Conditions

- a. **Mutual Mistake** - Both parties share the same mistake
- b. **Unilateral Mistake** - One party believes they have entered into a contract under a mistaken assumption (usually mathematical)
- c. **Condition** – An event that must occur
_____ **before** _____ performance is due. If condition never occurs, then party is _____ **excused** _____ from performing their obligations

18)[21] Excuses. *mock trial 2c

- a. **Impossibility** is when the promisor cannot perform what they said they would do (“_____ I can’t _____”)
 - i. **Ex:** _____ death of prom _____

- b. **Impracticability** – When neither party anticipated that the contract would be extraordinarily difficult and unfair to one party (“_____ I can’t _____”)
- c. Ex: 30% increase in the cost of raw materials, supplier wants to back out of contract or renegotiate for much higher payment. Buyer says no. Is seller excused?
_____ No _____

- d. **Frustration of Purpose** – Some event has occurred that neither party anticipated and the contract now has _____
 - i. (“_____”)

19)[22] Force Majeure

- a. Unforeseen event that prevents someone from fulfilling their contractual obligations (ex: _____ act of God, natural disaster _____)
- b. Effect: Does not excuse, but _____ a party’s obligation to perform while force majeure event is occurring

[23] List of Excuses - These are all of the excuses/defenses that a Defendant can use in a breach of contract lawsuit:

Before a deal is made – capacity and consent

After a deal is signed - fraud, duress, mistake, undue influence

During a deal – conditions, warranties, impossibility, impracticability, frustration of purpose

After a deal has ended – statute of limitations (a party must file a lawsuit within _____ years of a breach of contract)

20)[25] Big Picture Q5: If there is no excuse, what is the remedy?

- a. A remedy is the **method a court uses to** _____ **compensate** _____ **an injured party**
- b. Two types of remedies: _____ **Money** _____
(legal) and _____ **non-monetary** _____
(equitable) **damages**

[26] Monetary Damages

- c. **1 – Expectancy Damages** – What the non-breaching party would have received if the contract was ____ **fully performed** _____
 - i. **Policy:** Designed to put the injured party in the _____
_____ **same position** _____ they would
be in if both parties performed their obligations
- d. **Compensatory damages**
 - i. Ex: Andrea is going to star in my movie for \$7M. A few days before the shoot, Andrea informs me that she won't show up. I hire Gloria instead for \$10M. I sue Andrea and win. What are my damages? ____ **3 Mil** _____
- e. **2 – Reliance Damages** – The monetary equivalent of where the non-breaching party would have been if the contract ____ **never existed** _____ rty spent
_____ **time** _____ or ____ **money** _____
- f. **3 – Restitution Damages** – Requires the breaching party to give back any gains it improperly acquired under the contract

21)[27] Special Monetary Damages *

- a. **Liquidated Damages** – ____ **pre-determined** _____ specified monetary amounts that are agreed to in the contract
- b. **Nominal Damages** – Awarded for breach without proof, court will award the injured party a “moral” victory of a small amount of money, usually ____ **1 dollar** _____
- c. Eligibility for damages – To win monetary damages under *any* of the above theories, a Plaintiff must prove:
 - i. 1 – the Defendant’s breach ____ **caused** _____ **the loss**
 - ii. 2 – damages can be proven with _____ **reasonable certainty** _____ and were foreseeable
 - iii. 3 – Plaintiff ____ **mitigated** _____ its damages (use reasonable efforts to keep as low as possible)
- d. ***Punitive Damages** – designed to _____ **punish** _____ the defendant for wrongful conduct
 - i. Rule: Punitive damages are _____ **never** _____ awarded in BoC actions

22)[28] Non-Monetary Remedies

- a. Why do we have non-monetary remedies? Monetary damages on its own are _____ **insufficient/inadequate**

- b. Specific Performance – An order from the court that a party must _____ **perform what they agreed to under the contract** _____
- c. Injunction – An order from the court that a party **refrain** _____ from doing something

- i. Can a studio make talent waive their right to an injunction as part of a contract?

_____ Yes _____

- d. Reformation – An order from the court to _____ **re-write** _____ part of a contract

- e. Rescission – An order from the court to _____ **void** _____ a contract in its entirety

23)[29] Idea Submission/Implied-In-Fact Contracts

- a. Issue: Writer disclosed an idea to studio who makes a movie based on idea without giving the writer payment or credit

- i. Court focuses on the “_____ **Circumstances of the disclosure** _____”

- b. To win on a breach of implied-in-fact k lawsuit, P must prove:
Elements: (1) Writer created the idea; (2) Writer _____ **conditioned their offer** _____ to disclose the idea to the defendant **on the defendant’s express promise to pay** for the idea if the defendant used it; (3) Prod. Co., knowing the condition beforehand, voluntarily accepted its disclosure and (4) Prod. Co. found the idea valuable and **used it without giving the writer** _____ **payment** _____ **or** _____ **credit** _____

24)[30] Desny v. Wilder

- a. Facts: Writer sends treatment to studio head, which is then used by Paramount to create the movie *Ace in the Hole*. Writer does not receive payment or credit for the use of his idea and sues for breach of implied-in-fact contract. Who wins?

_____ **Yes** _____

25)[31] Spinner v. ABC

- a. Facts: Writer submits treatment to ABC in 1977 for a TV series based off of strangers on a desert island called “*Lost*”. ABC produces “*Lost*” in 2003 and does not credit or pay writer. Writer sues. Who wins/why? _____ **No, “independent creation defense”** _____
-

26)[32] Entertainment Talent Deals

- a. Option Purchase Agreements have the following deal terms:
- i. Option Term – _____ **time prod. Company has to sell your idea** _____
 - ii. Option Fee – _____ **payment for exclusive window** _____
 - iii. Purchase Price – _____ **payment for the script** _____
 - iv. Ancillary Rights – _____ **rights to other things like merch, spin-offs, etc** _____

****first negotiation deal- studios has to come to you first to write sequels, spin-offs, etc**

- b. What happens if the company cannot sell the script? Rights _____ **revert** _____ back to the author at the end of the option term, and _____ **writer can attempt to sell again** _____

Where we get our law from, the sources of law include the Constitution, local and state laws, common law, so judges decisions from cases, and administrative law, which comprisesHello, this is Professor Daniel Spitz with your Media Law Review Lecture.

This will be the last lecture that you have before your final exam.

Please remember to double check your syllabus, as well as on the course page to check when our exam dates are.

You will have a seven-day window with which to write the final exam, and it counts for 30% of your final grade in this class.

Now, let's go through and review what we covered together in Media Law this semester.

If we go on to the Canvas course page, you will note that there is a study guide available for you, as well as a breakdown of where you should spend your time studying for the final exam, what the coverage is in terms of multiple choice questions, as well as short answer questions.

I encourage you to put this lecture on pause and download and follow along with the copy of those review notes, as well as the exam coverage as you go through today's lecture.

Now, throughout the semester, we covered five major topics in this course.

We begun our discussion by looking at a civil litigation module, which will combine with the MPAA, the FCC, and new media regulation.

From there, we discussed constitutional law, moved into a discussion of copyright law, that through classes on contract law, followed by tort law, which encompasses defamation and the right to privacy.

To introduce this course, we looked at the process surrounding civil litigation.

So we know that every legal case begins with the filing of a complaint by the plaintiff.

Following the filing of a complaint, the defendant will respond with an answer.

Following the defendant's answer, the parties will exchange documents that each party wishes to prove a trial.

They'll examine the evidence, they'll interview witnesses.

This is known as discovery.

Following the exchange of discovery from both parties, each party will go through a trial setting.

So the plaintiff will begin by making opening statements and opening arguments followed by the defense.

Remember that in every case, the plaintiff has the burden of proof to prove their case by a preponderance of the evidence, P-O-E, or more likely than not.

At trial, once each party has completed their opening statements, then each party will bring forth their evidence, question any witnesses, before the judge or jury will make a decision or ruling or holding or verdict in this case.

If the losing party does not agree with the verdict, they have the right to file an appeal so long as there has been an error at law.

Now throughout the civil litigation process, there can be motions that each party can file.

For example, an MSJ or a motion for summary judgment applies when there is no triable issue of fact.

So both parties agree on what happened in the case.

Likewise, a party can also bring a motion to dismiss under section 12B6 for failure to state a claim upon which relief can be granted.

In order for a court to hear any civil litigation case, they need to have what's known as jurisdiction or power over either the parties, the plaintiff and the defendant, or the claim itself.

So certain cases belong in state court, such as contract cases and tort cases, or as other cases, such as copyright and constitutional law, belong in federal court.

the FCC and the MPAA.

When we look at authority, we have binding and persuasive authority.

So all decisions that are made by a court become precedent for future courts to follow.

The goal is to have uniformity.

In one case was decided one way, we want the next case to be decided the same way.

Binding authority comes from a higher court or the same court in the same jurisdiction.

Binding authority means the courts must follow that decision.

Likewise persuasive authority is a case or a case decision from a lower court or a court from a different jurisdiction.

In this case, lawyers can still use persuasive authority to help prove their case, but courts can choose to either abide by that law or to make their own.

When it comes to an appeal, the losing party in the first case who files an appeal is referred to as an appellant with the defendant then becoming the appellee or appellee.

An appeals court has the right to affirm or agree with the trial court's verdict to reverse or to vacate this decision.

Likewise, if a court wants to send something back to the original trial court, they will reverse and remand the case.

Now if a plaintiff wins an appeal, they're typically entitled to some combination of legal or monetary and equitable or non-monetary damages.

Moving out of civil litigation into our first amendment module.

The first amendment as part of the Constitution guarantees the right to free speech as well as freedom of expression and freedom of the press.

Every law that concerns the first amendment is evaluated using one of three standards of review, rational basis review, intermediate scrutiny and strict scrutiny.

To analogize those in your head, remember our umbrella example.

Under rational basis review, most laws are protected and constitutional and under strict scrutiny, it is the most restrictive test and most laws are found to be unconstitutional.

In any case, courts will balance the benefits of free speech versus the potential harms that can arise from it.

We know through our discussion that different types of speech are protected under certain categories.

For instance, political speech is protected unless it's likely to incite violence.

Commercial speech, which is historically evaluated using intermediate scrutiny, is constitutional unless it is false or somehow misleading.

Fighting words are words that are likely to inflict injury or breach the peace.

Artistic speech follows the three-part Miller test and artistic speech is routinely upheld and protected under rational basis review.

Now laws can be upheld as constitutional or struck down for being too vague or over broad.

We also looked in our constitutional law module at the history of motion pictures and the Supreme Court of the United States.

Historically, films did not receive First Amendment protection.

This changed with the 1952 miracle decision, which was the first case that provided First Amendment free speech protection for motion pictures as artistic speech.

When it came to the regulation of content of motion pictures, the Hays code scrutinized and regulated films from 1934 to 1968 and the Motion Picture Association now governs and has since 1968 through the present.

The Motion Picture Association rates films and studies theatrical viewing trends.

Meanwhile, the Federal Communications Commission, the FCC, is a government-appointed agency that

is responsible for regulating broadcasting.

Now broadcasting applies primarily to television and radio.

Neither the FCC nor the Motion Picture Association has any sort of jurisdiction or power over the internet and cannot regulate its content.

Moving back to the FCC, the agency previously attempted to promote content for a fair and balanced discussion of topics through its fairness doctrine.

However, this was later eliminated in the late 1980s.

The FCC can also fine, threaten to revoke a license or deny a license renewal for networks that engage in repeated indecent or profane content.

Indecency isn't quite up to the level of obscenity and profanity includes swearing on air.

Even fleeting expletives, so unintended swearing on air falls under profanity.

Finally, we looked at new media regulation.

So Section 512 of the Digital Millennium Copyright Act provides a safe harbor provision for certain content providers, so long as they do not edit or do something to exercise control over the content, then they cannot be liable for copyright infringement.

Likewise, once a new media outlet such as a YouTube does receive notice of infringing content, they are responsible for taking it down.

And so as we can see, censorship and content requirements differ significantly when compared with conventional cable.

Moving to our next module, we looked at copyright law and intellectual property.

So we know that there are three bodies of intellectual property.

We have copyright, trademark and patent.

Patent law primarily protects designs, systems and formulas.

Trademark law protects logos, slogans and short phrases.

And finally, copyright law is an exclusive legal right given to the owner of a creative work.

Remember that under all three doctrines of intellectual property, that nothing protects ideas, only the expression of those ideas are in fact protected under federal law.

And under copyright, there are seven different types of works that receive federal copyright protection under Section 102 of the Copyright Act.

We have literary works.

So books or novels or poems.

We have audio visual works, which comprise our motion pictures, our television series, our web series.

We have musical works that are protected under two separate copyrights.

We have the musical composition, which protects the notes and the lyrics of a song.

Or as the sound recording will protect the technical elements, the arrangement and levels of a song.

Likewise, copyright protects dramatic works.

So that is stage plays and musicals, including the music, choreographic works, which include dances, architectural works and compilations.

In order to receive copyright protection, you need to have fixed a copyright in a tangible medium of expression.

So written it down somewhere and originality.

You need some level of creativity, just the minimum amount in order to receive copyright protection.

Now, until you register the copyright with the copyright office, you as a copyright author do not receive legal protection in that you cannot enforce your copyright against any parties that infringe on it.

Once you have a copyright registered with the copyright office, an owner receives a bundle of rights under Section 106 of the copyright act.

So an owner can make copies, enter into derivative works, engage in public performances and distribute.

Within this right is the right to license or authorize others to do the same to engage in those Section 106 rights.

We looked briefly at ownership.

So joint authors have an equal and undivided interest in the work.

And then we looked at the distinction between a work for hire and an independent contractor.

If a copyright is owned as a work for hire, it means that an employee has produced this within the scope of their employment, or it's been commissioned or ordered specifically by a company to a writer or a creator.

If it's not owned by a company and you develop something yourself, then it is considered an independent contractor ownership and the copyright creator can do what they want with it.

If it's unclear whether something is a work for hire or an independent contractor, you look to various factors which include control.

Once a copyright is registered with the copyright office, then an independent contractor will receive copyright protection for their life plus 70 years.

And if something is owned as a work for hire, then a copyright owner will receive the shorter of 95 years from the date of publication or 120 years from the date of its creation.

Finally, once copyright ownership lapses, then it falls into the public domain and anyone has the right to use it.

If a party infringes and steals a portion or all of a copyright in work, then you can file a lawsuit by beginning with what's known as a cease and desist letter.

A copyright owner has three years from the date of the last infringing act with which to sue someone for the unfair exploitation of a work.

In court, a plaintiff will argue copyright infringement.

They need to prove the following elements to do so.

Element number one includes ownership of a valid copyright.

Element number two is that the copyright is registered with the copyright office and the plaintiff needs to prove either element 3A, direct copying, or element 3B, access, and substantial similarity, which comes up much more frequently in the context of copyright infringement lawsuits.

The court will then evaluate the plaintiff's argument using two tests.

They'll use the extrinsic test where they will bring an expert opinion to analyze the two works.

And the jury will apply the intrinsic test based on their personal or subjective beliefs, whether the works sound or feel substantially similar to one another.

Within the context of a copyright infringement lawsuit, a defendant has a number of defenses that they can bring at their disposal.

They can say that the work was independently created.

That the statute of limitations has passed.

That the work is transformative and something new has been created.

Or they can use a fair use test, which is a four factor test, where the court looks at the purpose, the nature, the amount and substantiality, and the commercial revenue that has come in as a result of the infringing work.

If something hasn't been used in much detail, then the defendant can also claim a de minimis use.

That's such an insignificant part of the work has been used that it doesn't amount to copyright

infringement.

Finally, we looked at vicarious and contributory infringement.

So vicarious infringement is where a third party receives a financial benefit from infringing work.

And contributory infringement is where a third party authorizes another party to engage in infringement on its behalf.

If a plaintiff wins a copyright infringement lawsuit, they can win monetary damages of up to \$150,000 per infringing act.

So each time a song is played at a concert, or each time a movie is played on screen, those are separate infringing acts.

Likewise, a plaintiff can also win a non-monetary remedy known as an injunction, which is where the court ensures that a party is refrained from engaging in any other unauthorized use.

An injunction works like a giant stop sign.

We finished off our discussion of copyright by looking at music law.

So we looked at lots of different cases and how the court has applied copyright law, sometimes inequitably, towards various cases.

We looked at the Blur-Lines case, the Lizzo case, the George Harrison case, the Black Eyed Pease case, the Roy Orbison and Two-Live Crew case, the Drake case, the Katy Perry case, and the Led Zeppelin case, all of which had various stages of decisions.

Some cases were removed on summary judgment before they even went to trial, and some lasted in court for decades.

Our next module that we went through is contract law.

In contract law, we had five major big picture questions.

Is there a contract?

If there is a contract, what does it mean?

Is there performance, or is there breach?

If there's a breach, is there an excuse?

And if there is no excuse, what is the remedy?

Big picture question number one, is there a contract?

We know that all contracts are made up of mutual assent, which includes the doctrines of offer and acceptance, plus consideration.

An offer has two elements, so intent and definite terms, whereas acceptance has to follow the mirror image rule, where the terms of acceptance have to mirror the terms of the offer.

Likewise, consideration involves an exchange of promises between the parties.

A paper that offers can be revoked by a party, or removed any time before it is accepted.

The one exception to this rule are option contracts, where a party pays to keep an offer open for a set period of time, in which case the offer cannot be revoked.

Other ways which a contract is formed are an express contract, writing, an implied contract through the party's behavior, reliance, where the plaintiff has spent time or money preparing for a deal, and it would be unfair for the court not to enforce one.

And lastly, we have restitution and unjust enrichment that looks at the benefit the defendant received under the deal.

Big picture question two, if there is a contract, what does it mean?

Looks at the terms of the deal itself.

Terms are divided up into material terms, so the fee or compensation, the term or schedule of the agreement, and any bonuses that someone might receive.

Likewise after the material terms you have the boilerplate terms, which are standard terms and conditions, that apply to every contract.

Some of those terms include a merger or integration clause, where every prior negotiation is merged

into the four corners of the contract and integrated, so no outside writing or negotiations are controlled, just what's on the contract itself.

Likewise you have a force-measure clause, which is an act of God, which allows a party to temporarily suspend its performance.

If the terms of a contract are somehow unclear, they're vague, or they are ambiguous, courts can replace those terms using what's known as gap fillers, based on custom and practice in the industry in which the contract is housed.

But the court prefers to look to the party's intent and prior deals first, if any exist.

If a deal is still unclear after all those factors, then the court will interpret or construe the contract against the party who drafted the contract.

Every picture question three asks, is there performance or is there breach?

So full performance is never a breach, whereas part or poor or no performance may be in fact a breach.

And we say maybe because there still may be time to perform.

If a contract contains what's known as a time of the essence clause, then performance is strictly enforceable as of that given date.

Likewise the doctrine of anticipatory repudiation states that if a party is indicated to the other, that they will not perform their obligations before a contract term is due, then they are in breach and a party can sue.

Big picture question four said if there is a breach, is there an excuse?

And so there are a number of excuses or defenses that a defendant in a breach of contract action can use at its disposal.

The defendant can argue a condition has not occurred.

They can argue impossibility that they can't perform.

They can argue in practicability that it is too costly or difficult to perform.

Or they could argue frustration of purpose that there is no value to their performance under an agreement.

Other defenses and other issues that may come up include contracting with a minor, so someone below the age of majority that can determine capacity issues.

There's also the defense of fraud involving material false statements, undue influence and duress where one party has an unfair bargaining power over the other, or a mutual mistake where both parties are mistaken about a basic assumption under the contract.

Big picture question five says if there is no excuse, then what is the remedy?

And remedies in the breach of contract action are categorized into monetary and legal or non-monetary and equitable damages.

Temporary damages are broken down into ex-p- pardon me, expectancy damages, so if a contract was fully performed.

Reliance damages, if the contract never existed.

Restitution damages, so the breaching party has to give back any gains.

And remember that there are no punitive damages in a breach of contract lawsuit that only applies to tort-based lawsuits, which include defamation and the right to privacy.

When we look at non-monetary damages, there are four primary non-monetary damages that a court can issue, an injunction, which is an order from the court that a party refrained from doing something.

Likewise you have specific performance, which is an order from the court that a party must perform their specific obligations that they agreed to under the deal.

The last two non-monetary remedies are Reformation and Rescission.

Under Reformation, the court will rewrite a portion of the contract and with Rescission, a court will rip up and void the deal altogether.

Regardless of the type of damages the plaintiff is seeking in a breach of contract action, a plaintiff must prove all of their damages with reasonable certainty and the non-breaching party or the plaintiff in the lawsuit must attempt to mitigate their damages by keeping them as low as possible.

From there we look briefly at the preemption doctrine, so if federal law and state law are in conflict with one another, then the federal law is controlling.

This applies primarily when we speak about implied-in-fact contracts.

Implied-in-fact contracts originates from idea disclosure.

So remember that ideas are not protected under copyright or any other intellectual property law, however they can be protected under a contract law theory.

So if a writer pitches a company with a script idea and the studio who heard that pitch then uses the writer's material and they don't give the writer credit or they don't give the writer payment, then the studio can be liable if the writer indicated that he expected to be paid if the studio used that idea and the studio understood that specific condition.

So that is an example of a breach of an implied-in-fact contract where you have no written deal between the parties but through the totality of each party's actions they understand that a contract was formed in this case.

Moving out of our contracts module, we then started to look at tort law which includes the doctrines of defamation and our four right-of-privacy tort.

Defamation, just like a breach of contract action, the burden of proof is placed on the plaintiff who must prove their case by a preponderance of the evidence, which is similar to say 51% or more likely than not.

Defamation is classified into two types.

You have libel which is written or broadcast defamation and you have slander which is spoken defamation.

There are four elements to defamation.

You have number one, a false statement, number two, of and concerning the plaintiff, element number three, publication to a third party and element number four, harm to reputation.

So with element number one, the statement must be actually false.

With element number two, the statement must refer to the plaintiff or give enough physical characteristics that we know who the statement is referring to.

Element number three means that at least one third party must hear the defamatory speech and element number four is harm to someone's reputation which can be proven through a number of different factors.

Now if the false statement is considered to be slander or libel per se, it fits into a category of a loathsome disease, someone committing a crime or someone has engaged in either sexual or professional misconduct, then that fourth element of harm to reputation does not need to be proven.

The harm is presumed and so it's considered slander or libel per se.

Once a plaintiff has gone through these four elements of defamation, they then need to prove a specific level of falsity.

Public figures or public officials must prove actual malice, meaning that the defendant acted with knowledge of falsity or reckless disregard of the truth.

Likewise, private figures have to prove negligence.

So the company must have acted unreasonable in light of a foreseeable risk of harm.

There are four elements to negligence.

We have duty, breach, causation, and damages.

A plaintiff must prove all four in order for a defendant to be liable, not guilty, but liable for defamation.

Moving to defenses, speech can be protected under the First Amendment.
So the court has previously used the Omen test to distinguish facts from opinions.
Other defenses include fair comment, fair report, which includes the doctrines of absolute and qualified privilege.
And of course, the truth.
The truth is a valid defense to defamation.
When we speak about absolute privilege, statements that are made in court or in Congress are protected from defamation issues.
Likewise qualified privilege protects the neutral reporting of the press.
This is protected so long as the statements that the press reveals are considered to be newsworthy.
And so with newsworthiness, the report must be accurate and it must have some public concern.
There are a number of factors that the court will use in determining whether something is newsworthy and they will look primarily at the timing of the story, the significance of the story, whether there is human interest in the story, as well as the prominence of the story.
Moving from our defamation to our right of privacy module.
There are four main right of privacy torts that we studied this semester.
False light invasion of privacy or flip intrusion upon seclusion, public disclosure of a private fact, and misappropriation of name, likeness, and identity.
False light invasion of privacy or flip is the most similar to defamation.
It is a false statement that portrays a person as someone or something that person is not.
With a false light invasion of privacy claim, the media is allowed slightly to distort or embellish the facts.
However, if a plaintiff can prove that the statement was highly offensive to a reasonable person, then they can prove their claim for false light invasion of privacy.
With all right of privacy torts, the harm is broader than in defamation.
So your harm is not limited to just your reputation.
There can be other emotional or business interests or physical injury that can also constitute harm under any of these torts.
Likewise with false light invasion of privacy, all plaintiffs have to prove actual malice regardless of whether they are considered a public figure, a limited purpose public figure, a public official, or a private figure.
And finally, the other distinction with false light invasion of privacy relative to defamation is that false light must be published to a mass group.
Of people rather than just at least one third party.
Our second right of privacy torts concerns intrusion upon seclusion.
This is a physical or technological disturbing of someone's reasonable expectation of privacy.
All of us have a reasonable expectation of privacy in our home or in our phone conversations.
We have a lesser reasonable expectation of privacy in certain public places where we are invitees and we have a very low or no reasonable expectation of privacy on employer provided cell phones at an airport or at borders.
When it comes to intrusion upon seclusion, if someone broadcasts harmful material that someone was not aware of, then they can be liable under this tort.
The third right of privacy torts that we look at this semester is known as a public disclosure of a private fact.
This is the publication of truthful private information that is not of legitimate public concern.
And so unlike defamation and unlike false light invasion of privacy, we are dealing with a

true statement here rather than something that needs to be proven false.

The key element that a plaintiff must prove in the context of a public disclosure or private fact tort is the element of newsworthiness.

A plaintiff must show that something is a morbid and sensational crime and not newsworthy.

A defendant may always use the First Amendment defense.

They can say that the information that was published has public significance and the information was lawfully obtained.

Finally, we looked at the misappropriation of name, likeness, and identity, or NLI for short.

Under the misappropriation doctrine, a company uses someone's NLI without permission for commercial gain.

We looked at this in the context of the Vanna White case where Samsung used an advertisement that looked similar to Vanna White without her permission and without payment.

Vanna White successfully sued for damages.

Misappropriation is separated further into commercialization and the right of publicity, which does survive the death of the plaintiff.

When it comes to defamation, someone's estate or their heirs cannot sue on their behalf.

This is not true under the misappropriation doctrine.

If someone's name, likeness, and identity is being used for commercial or trade purposes, then it is considered a violation of someone's right to privacy.

So with defamation, we deal once again with harm to reputation, with the right to privacy in a broader context, we're dealing with the right to be left alone.

Defenses to all of these right of privacy torques include newsworthiness using the same factors that we had in defamation, information in the public domain, information that the plaintiff consented to, incidental or minor use, and we have the first amendment factors.

Also transformative use, or something new is being created, and artistic relevance.

We finished off our right to privacy discussion by focusing on two other claims, trademark infringement and false endorsement.

In either instance, a plaintiff must prove that there is a likelihood of confusion with what trademark is being promoted, along with someone's use, or that a plaintiff is somehow falsely endorsed or authorized their name on a product or service.

So the likelihood of confusion is the legal standard that the court uses to determine a violation of trademark under the LEMACT or false endorsement.

During our right of privacy module, we had our third and final mock trial.

Mock trial 3a that focused on fair steam versus Netflix, this is where a streaming video on demand provider released when they see us, which is a documentary on the wrongfully convicted central park five.

The broadcast showed prosecutor Linda Ferris steam as a racist, power hungry individual who will stop at nothing to put the accused behind bars.

And so the documentary, which refers to Linda Ferris steam by her name, could be considered defamation because Ferris steam was not in fact the prosecutor on the case, and was the head of the division that prosecuted the central park five.

However, the documentary places her as the central figure and the central antagonist in the broadcast, leaving viewers to believe that she was in fact the person responsible for prosecuting the central park five.

In this case, Netflix can use the first amendment successfully as a valid defense.

Television broadcasts are usually seen as sufficiently transformative or new and not necessarily defamatory.

And so they are protected as artistic speech under the first amendment.

The policy that goes against this is that too many broadcasts would be restricted for their content if the court ruled otherwise.

And so the defendant Netflix wins because Linda Ferris steam who is considered a public figure and has kept herself in the limelight because of this case did not prove the high actual malice that is required to give a defendant liability.

Finally, networks have the right to fictionalize certain elements of a story to make them more salacious or to make them more dramatic.

Now this does not give a network a blanket right to defame, but it's not considered defamation in this sense as the broadcast contains dozens of characters.

This one just happens to be about an unfortunate antagonist.

And so even though the plaintiff has a right to be left alone after many years after this case has occurred, however, the events of the central park five are still considered newsworthy in the context of discussions about race relations and the legal system.

Mock trial 3B focused on Tom Hanks suing California naturals.

In this case, celebrity Tom Hanks sues a CBD company for implying that he endorses its products as they've used Tom Hanks's testimonial on various advertising materials that led to a massive increase in the defendant's sales.

Tom Hanks here had sued the defendant on a number of different causes of action and is most likely to be successful on the false advertising and misappropriation of name, likeness and identity torts.

In this case, false advertising would confuse consumers that Tom Hanks did in fact endorse CBD products promoted by Cali Naturals when he in fact had not.

Similarly, Cali Naturals should be liable for misappropriation of name, likeness and identity because they're using Tom Hanks's name for commercial gain without his authorization to do so.

When it comes to public disclosure of a private fact, we know that the fact of Tom Hanks using CBD products is true for purposes of this trial.

And so it may not rise to the level of being highly offensive to a reasonable person or being not newsworthy.

The defense can argue in this case that CBD does not present the same social stigmas that it did at one point in time.

And so even though Tom Hanks did not willingly enter into a sponsorship deal with the company and has the right to protect his name, likeness and identity, that does not impute liability for public disclosure of a private fact.

The Walk Trial 3C focuses on Sarah Sileb versus Star Weekly.

In this case, we had a tabloid magazine that published an article about the plaintiff discussing her upcoming comeback and speculating about the reason that she had been out of the spotlight for a number of years and claiming that it was due to a botched plastic surgery incident.

And so in this case, we have an intrusion upon seclusion claim.

And it's unclear whether the information about Sarah's comeback is true.

Certainly a comeback may not be highly offensive to a reasonable person.

However, information about a botched plastic surgery procedure could be considered a morbid and sensational crime.

Most times when we deal with cases of this nature where a tabloid magazine has been sued like a national inquirer or a TMZ, a lot of times these companies settle the case and avoid liability even though they are known for embellishing or distorting certain facts that still claim newsworthiness because they are promoting public figures and even one that has avoided the public for years could still be considered a public figure by society. And therefore news about celebrities is generally protected as newsworthiness.

So it's likely that in this case, case 3C, Star Weekly is liable for intrusion upon seclusion because it's intruding upon a private place, conversation or matter when they're taking elements of Sarah's private diary.

But it's unlikely that they are liable for false light invasion of privacy since it's unclear whether the information that was actually published is in fact false.

Finally, we concluded our four mock trials with the case of George Governor versus CNBC.

In this case, we have a defendant, a network that broadcasts a news report a month before the California election showing that the current LA mayor, an upcoming gubernatorial candidate, was previously imprisoned for fraud and that the photo shown alongside the CNBC broadcast was that of his twin brother and not in fact the governor.

In this case, George sued for defamation and for negligence.

And since the governor is considered a public official or a public figure, then he has to prove actual malice, which is difficult because the network did take some affirmative steps to verify the accuracy of what was being broadcast.

Now, there's no question the information in this case is presented as newsworthy.

And so the governor or plaintiffs best argument here is for negligence because the standard of proof is much lower with negligence.

You don't have to prove actual malice.

Just that the defendant had a duty as a reasonable television broadcaster.

It was breached when they published false information.

It caused damages.

So in this case, the candidate losing the election or having some sort of emotional or psychological trauma or loss of business and damages, which is proven by quantifying any of those issues.

The causation element of negligence connects the defendant's breach to the plaintiff's harm.

And so in this case, CNBC did not act as a reasonable broadcaster as it should have taken additional steps to verify the truthfulness or falsity of the article.

And so in this case, the defendant is not liable for defamation because it's difficult to prove the actual malice standard, but they are considered to be negligent.

Aside from these modules, we also had a contract negotiation exercise during the semester.

So that was a negotiation between talent and studio representatives for a motion picture actor steal.

There were six categories that you were responsible for negotiating the fee or compensation, the bonuses, credit, assistant, premier tickets, and various perks, which include a per diem, flights, and hotels.

We then debrief that with our following Bayes class.

Finally we had a TBD lecture this semester.

I encourage you to go back and listen to the TBD lecture audio archive to make sure that you keep up with those notes.

Before we call the day with our review lecture, I encourage you, once you're finished today's lecture, to please go on to get either through your phone or through your computer and to leave a review of this course.

As you know, the student opinion survey process is very helpful to analyzing what faculty have done.

It assists us as adjunct faculty in being retained for future years, and your positive or constructive comments are very much appreciated.

So I encourage you, if you have not done so already, to go online through the get app, select student course evaluations, and please take eight to ten minutes after this lecture to complete a survey.

Now, your final exam in this course, all of the instructions for your final exam will be available on Canvas.

So please check those specific items before writing the final exam.

The final exam counts for 30% of your grade in this class.

It is broken down into 45 multiple choice questions and 15 points for short answer or essay questions.

Please note that the short answer and essay questions are found at the end of the exam questions 46 and 47.

If you wish to do those first, you are more than welcome to.

In addition, there is also a suggested time for each of these sections, multiple choice.

You have approximately 110 minutes, so about two to three minutes per question.

And for your essay, I recommend that you spend about 30 to 35 minutes on your essay.

Finally, there is one bonus question.

You receive one point for providing any answer to the bonus, and you get two points for providing the correct answer.

A few tips on multiple choice and your short answer.

With multiple choice, I encourage you to read the last sentence of the question prompt first.

This will indicate which area of law I want you to refer to, and it will give you an idea as to what answer choices you can knock out right away.

So read the last sentence, then the four answer choices.

If you are down to two answers left and you are unclear, which one is correct, choose the answer that involves the law rather than one that argues the facts of the case.

In law, legal answers are always better than factual or policy-based answers.

Again I encourage you to spend as much time as you need on the multiple choice, about two to three minutes per question.

Please make sure to read the question carefully.

There are also some practice multiple choice questions available to you on the course page.

I highly recommend that you time yourself, give yourself about 20 to 30 minutes, to complete the practice multiple choice questions available on the course page.

Likewise, with your short answer or your essay questions, the number one way that I see students not perform as well as they like is that they do not write a sufficient amount of information.

If you get a question that is two or three points, make sure that you're writing enough.

More than one sentence is usually better, so make sure that you maximize your points on the short answer portion by writing a sufficient amount of detail for each question prompt.

As I noted, the exam is open book and open notes, and I encourage you to observe academic honesty and to complete the exam on your own.

I do not recommend spending your time memorizing questions or memorizing certain parts of law.

This is open book and open notes, and many of my questions on both the short answer and the multiple choice portion of your final are considered to be situational in that we looked for which party has made the best argument or you be the judge who wins and why.

As I've noted previously, this exam is a cumulative final, so anything and everything that we have covered throughout this course and in today's review is considered fair game.

That is inclusive of your TBD lecture, inclusive of your negotiation, and inclusive of your mock trials as well as current events.

So anything we discussed at the beginning of class can show up on your final exam.

I encourage you to look back through your notes to see the breakdown of essay and multiple choice questions.

I also encourage you, if you're looking to go back and review our lectures, to use the handouts that were provided to you in class, and rather than go through each audio archive

lecture from start to finish this semester, remember that about five minutes into each class, we have a short sport center like review of the key parts of our last days lecture. It summarizes everything you need to know in just a few minutes.

I encourage you, if you have the time, to go back and to review a few of those minutes within the audio archive to the lecture.

Beyond that, if you are looking to have a comprehensive evaluation of the rules, you can always look to the law librarians from all of the mock trials.

So all the law libraries and all of those mini outlines that were created for you throughout the semester can be used as a good and helpful study guide as to what the actual rules of law are.

So I encourage you, if you have not done so already, to look at all mock trial law libraries and to review any discussion questions, any discussion posts that you have made throughout the semester.

That is it for our review lecture of this course.

I want to thank you for taking the time to listen to today's lecture.

And I want to thank you for being a part of the course with me this semester.

It has been a pleasure to work alongside you and to get to know you better.

If you have any questions following today's review lecture, I highly encourage you to reach out by email or to set up an appointment with me or to attend office hours.

That is it for our review lecture.

Thank you for attending and have a nice day.